

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

DOCKET NO.: TSCA-08-2004-0006

IN THE MATTER OF:

KEM ELECTRIC COOPERATIVE, INC.)

107 South Broadway

Linton, North Dakota 58552

RESPONDENT

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

December 8, 2004

DATE

SIGNED

Alfred C. Smith

Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. TSCA-08-2004-0006

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)	
KEM Electric Cooperative, Inc.)	
107 South Broadway)	CONSENT AGREEMENT
Linton, North Dakota 58552)	
)	
Respondent.)	
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Complainant, United States Environmental Protection Agency, Region 8, and Respondent, KEM Electric Cooperative, Inc., by their undersigned representatives, hereby consent and agree as follows:

1. On September 28, 2004, Complainant issued a Complaint alleging certain violations of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. section 2615(a), et seq. The Complaint proposed a civil penalty for the violations alleged therein.
2. Respondent admits the jurisdictional allegations of the Complaint, neither admits nor denies the specific factual allegations, but does desire to resolve the EPA's allegations through this agreement.
3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint.
4. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.
5. Respondent consents and agrees to pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00), in the manner described below in this paragraph:
 - a. Payment is due within 60 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. The date the payment is made is considered to be the date of receipt of the payment at the Mellon Bank described below. Payments must be received by 11:00 a.m. EST to be considered as received that day.
 - b. The payment shall be made by remitting a cashier's or certified check for, including the name of the docket number of this case, for this amount, payable to

"Treasurer, United States of America," via Regular Mail at:

U. S. Environmental Protection Agency, Region 8
Mellon Bank
P.O. Box 360859
Pittsburgh, PA. 15251-6859

Federal Express, Airborne, or other commercial carrier at:

U.S. EPA, 360859
Mellon Client Service Center Rm 670
500 Ross Street
Pittsburgh, PA 15262-0001

Wire Transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA= 021030004
TREAS NYC/CTR/
BNF= /AC-68011008

A copy of the check shall be sent simultaneously to:

Ms. Kim Le
Technical Enforcement Program (8ENF-T)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and

Ms. Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

c. In the event payment is not received by the specified due date, interest on accrues from the date of the final consent order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e. on the 1st late day, 61 days of interest accrues.)

d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 61st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not

received within 90 days of the due date (i.e. the 151st day from the date the final consent order is signed). Payments are first applied to accrued interest, penalty and/or handling charge; the balance is then applied to the outstanding principal amount.

e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

6. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.

7. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

8. Nothing in this Consent Agreement shall be construed as a waiver by the U.S. EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

9. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.

10. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

11. Each party shall bear its own costs and attorneys fees in connection with this matter.

12. This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint. Upon full satisfaction by Respondent, Complainant hereby releases, covenants not to sue, and agrees not to seek further civil or administrative penalties for the specific violations alleged in the complaint. Nothing in this a Consent Agreement shall be construed as a release or a covenant not to sue for any claim or cause of action of any criminal liability.

IN THE MATTER OF:

KEM Electric Cooperative, Inc.
EPA Docket No. TSCA-08-2004-0006

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: **12/6/04**

By: **SIGNED**
Martin Hestmark, Director
Technical Enforcement Program

Date: **12/6/04**

By: **David J. Janik**
Michael T. Risner, Director
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program

Date: **11/30/2004**

By: **SIGNED**
Dana J. Stotsky
Senior Enforcement Attorney
Legal Enforcement Program
U.S. EPA Region 8
Colorado Bar # 14717
999 18th Street, Suite 300
Mail Code: 8ENF-L
Denver, Colorado 80202-2466

KEM ELECTRIC COOPERATIVE, INC.,
Respondent.

Date: **11/24/04**

By: **SIGNED**
Michael D. Rudolph
General Manager/CEO

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **KEM ELECTRIC COOPERATIVE, INC., DOCKET NO.: TSCA-08-2004-0006** was filed with the Regional Hearing Clerk on December 8, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Dana Stotsky, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on December 8, 2004, to:

Michael D. Rudolph
General Manager/CEO
KEM Electric Cooperative, Inc.
107 S. Broadway
P. O. Box 790
Linton, ND 58552-0790

Pouch mailed and telefaxed to:

Honorable Spencer Nissen
Administrative Law Judge
U. S. Environmental Protection Agency
Ariel Rios Building (1900L)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

December 8, 2004

SIGNED

Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON December 8, 2004.**



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